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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1968

No. 1340

In the Matter of:
MELINDA LOU MARKEL

PETITION FOR WRIT OF CERTIORARI

to the Superior Court of the State of California, for the County of Kern, and to the Superior Court of the State of California, for the County of Kern, Juvenile Court

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In the Matter of:
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PETITION FOR WRIT OF CERTIORARI

to the Superior Court of the State of California, for the County of Kern, and to the Superior Court of the State of California, for the County of Kern, Juvenile Court

Petitioner, Melinda Lou Markel, respectfully prays for the issuance of a Writ of Certiorari to review the Judgments of the Superior Court of the State of California for the County of Kern, Juvenile Court, rendered March 15, 1968, entered on March 19, 1968, and the decision of the Superior Court of the State of California for the County of Kern, discharging and dismissing a Habeas Corpus Writ entered March 19, 1968, and entered on the same day.

OPINIONS BELOW

The proceedings below were commenced by the filing of a Petition in the Superior Court of the State of California for the County of Kern in the Juvenile Court thereof, being Petition No. 31,730 entitled In the Matter of Melinda Lou Markel, and pursuant thereto a detention hearing was had and your Petitioner was detained in the Juvenile Hall of said Juvenile Court, the records and decisions of which (because they are short) are attached hereto as Appendix A.

A Petitioner for Writ of Habeas Corpus was filed in the Superior Court of the State of California for the County of Kern and a hearing was had on said Writ in an effort to cause the release of your Petitioner after the Order for Detention had been made, and the whole of the record, including the Petition, the Record of Proceedings, and the Decision adverse to Petitioner are attached hereo as Appendix B because the whole of said record is brief.

In both these proceedings your Petitioner asserted a constitutional question under the United States Constitution.

JURISDICTION

The Judgment of the Superior Court of the State of California for the County of Kern on Habeas Corpus discharging the Writ of Petitioner was made March 19, 1968 and entered the same day. The jurisdiction of this Court in invoked under 28 U.S.C. Sections 1257(3) and 2101(d).

QUESTION PRESENTED

1. Whether Section 636 of Division 2, Chapter 2 of the Welfare and Institutions Code of the State of California is unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution inasmuch as under said Section Petitioner is and was detained without bail pending hearing on a criminal accusation.

CONSTITUTIONAL AND STATUTORY LAW INVOLVED

Constitution of the United States, Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Constitution of the United States, Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Div. 2, Ch. 2, *Welfare and Institutions Code of the State of California,*

Section 656: *Petition; verification; contents.* A petition to commence proceedings in the juvenile

court to declare a minor a ward or a dependent child of the court shall be verified and must contain:

(a) The name of the Court to which the same is addressed.

(b) The title of the proceeding.

(c) The code section or sections and subdivision or subdivisions under which the proceedings are instituted.

(d) The name, age and address, if any, of the minor upon whose behalf the petition is brought.

(e) The name or names and residence address, if known to Petitioner, of all parents and guardians of such minor. If there is no parent or guardian residing within the State, or if his place of residence is not known to Petitioner, the petition must also contain name and residence address, if known, of any adult relative residing within the county, or, if there be none, the adult relative residing nearest to the location of the Court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he is detained in custody, the date and the precise time the minor was taken into custody.

Section 630. *Filing petition; notice of hearing; privilege against self-incrimination; confrontation by and cross-examination of witnesses.*

(a) If the probation officer determines that the minor shall be retained in custody, he shall immediately file a petition pursuant to Section 656 with the clerk of the juvenile court who shall set the matter for hearing on the detention hearing calendar. Immediately upon filing the petition with the clerk of the juvenile court, if the minor is alleged to be a person described in Section 601 or 602, the probation officer shall serve such minor with a copy of the petition and notify him of the time and place of the detention hearing. The probation officer shall thereupon notify a parent or guardian of the minor of the time and place of such hearing. Such notice may be given orally.

(b) In such hearing the minor has a privilege against self-incrimination and has a right to confrontation by, and cross-examination of, witnesses.

Section 635. *Examination of minor; order releasing minor from custody.*

The court will examine such minor, his parent, guardian, or other person having relevant knowledge, hear such relevant evidence as the minor, his parent or guardian or their counsel desires to present, and, unless it appears that such minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the

jurisdiction of the court, the court shall make its order releasing such minor from custody.

Section 636. *Order detaining minor in juvenile hall; period of detention.*

If it appears upon the hearing that such minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the jurisdiction of the court, the court may make its order that such minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter said order together with its findings of fact in support thereof in the records of the court.

STATEMENT OF THE CASE

This case arises out of a supplemental petition which was filed in the Juvenile Court of the Superior Court of the State of California for the County of Kern, being the Juvenile Court's No. 31,730 which is shown under Appendix A and also as the first page of the Clerk's Transcript of the Juvenile Court proceedings filed herewith. The Petition indicates on its face that the minor, your Petitioner, was taken into custody March 13, 1968 at 7:00 o'clock A.M. The Petition was filed March 14, 1968 as shown by the filing stamp by the said Superior Court. The Petition alleges that your Petitioner, a minor of the age of 16 years, comes

within the provisions of Section 602 of the Welfare and Institutions Code of the State of California, which said section within Division 2, Chapter 2 of the said Welfare and Institutions Code of the State of California, and provides that any person under the age of 21 years who violates any law of this State (California) or of the United States or any ordinance of any city or county of this state defining crime, or who, after having been found by the Juvenile Court to be a person described by Section 601, fails to obey any lawful order of the Juvenile Court, is within the jurisdiction of the Juvenile Court, which may adjudge such person to be a ward of the Court. The petition alleges that your Petitioner violated a law of the State of California, namely a State law prohibiting the selling of a dangerous drug, specifically Section 11912 of the Health and Safety Code of the State of California.

A detention hearing was had on Friday, March 15, 1968 under the provisions of Section 636 of Division 2, Chapter 2, Welfare and Institutions Code of the State of California, being part of the Juvenile Court Law of said State, and pursuant to said hearing, your Petitioner was held without bail pending the hearing upon the merits of the petition itself.

On the same day your Petitioner filed her Petition for Writ of Habeas Corpus in the Superior Court of the State of California for the County of Kern alleging that the restraint of your Petitioner was unconstitutional, and the said Code Section 636 was unconstitutional in that it violated Amendment VIII of the United States Constitution, and therefore that your

Petitioner was illegally held without bail. There were other grounds on the Petition for Writ which are not concerned as part of the constitutional question.

A hearing was had on the Petition for Writ of Habeas Corpus on March 19, 1968, and the Petition for Writ was denied, and your Petitioner was held without bail pending the hearing on the original juvenile court petition on its merits, now set for April 5, 1968. Your Petitioner is still detained.

BASIS FOR FEDERAL JURISDICTION

The jurisdiction of the Supreme Court in this matter is invoked pursuant to 28 U.S.C., Section 1257(3) Sec. 2101(d) to review the judgment of the State Court, in this instance the Superior Court of the State of California for the County of Kern in Habeas Corpus, and the Superior Court of the State of California for the County of Kern, Juvenile Department, on a matter concerning the violation of your Petitioner's constitutional right as guaranteed under the VIII and XIV Amendments to the Constitution of the United States, that the judgments of the trial Courts are a denial of your Petitioner's constitutional rights. The issue involves a substantial Federal question.

REASONS FOR GRANTING WRIT

I.

The case of *In re Castro,* 243 Cal.App.2d, p. 402, an appeal from which was denied by the Supreme Court of the State of California, is the latest expression of the highest Court of California, relative to an interpretation of the Juvenile Court Law. It is stated at page 408 of said decision that,

> "One of the important rights set up in the amendments to the federal Constitution is the right to a jury trial (U.S. Const., Amend. VI); but the law relating to juvenile courts in this state has never provided for a jury trial and none is allowed. (Citing case.) Another right given to persons accused of crime is the right to bail (U.S. Const., Amend. VIII), but bail, as such, is not now provided for in the juvenile court enactment in this state. (Citing case.)"

and again at pages 407, 408 and 409:

> "Notwithstanding the consistent repetition of the holding that a proceeding in the juvenile court is not a criminal trial, there have been indications of uneasiness by the courts for many years that seem at variance with this theory, stressing the constitutional rights of potential wards, which ordinarily are called upon in criminal prosecutions. (Citing cases.)
>
> "In recent times, also, there are increasing indications that this theory of treating juvenile offenders has not always worked out with beneficial results and that there is discontent with the theory and practice of juvenile courts in parts of this country. (Citing cases.)

"As an intermediate appellate court we are bound by the law enunciated by the Supreme Court. (1) For, as is said in *Auto Equity Sales, Inc. v. Superior Court,* 57 Cal.2d 450, 455 (20 Cal.Rptr. 321, 369 P.2d 937): 'Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.'

"(2) We, therefore, necessarily accept the holding that juvenile court proceedings are not criminal trials and that, as civil proceedings, they are amenable to the law specifically relating to them. (Citing cases.)

"The importance of juvenile court cases is stressed by the fact that during the year 1964-65 juvenile courts throughout California handled 52,089 filings out of a total of 416,292 superior court filings, that is to say one-eighth of all cases filed. Last year, some 49,837 juvenile court cases were disposed of, that being an increase of 4,508 cases over the experience of the previous year.

"One of the important rights set up in the amendments to the federal Constitution is the right to a jury trial (U.S. Const., Amend. VI); but the law relating to juvenile courts in this state has never provided for a jury trial and none is allowed. (Citing case.) Another right given to persons accused of crime is the right to bail (U.S. Const., Amend. VIII), but bail, as such, is not now provided for in the juvenile court enactment in this state. (Citing case.) (3) In criminal cases, proof of guilt must be made beyond all reasonable doubt (Pen. Code, 1096); but in juvenile court the quantum of proof of the facts required to

authorize a finding of wardship need only be a preponderance of the evidence. (Welf. & Inst. Code, Sec. 701.)

"We believe that both theory and practice show that this state cannot logically or practically carry on an effective system which adheres in part to the underlying theory of juvenile courts but, at the same time, requires the strict procedural exercise in detail of all of the constitutional rights accorded to an adult accused of crime. It may be noted in this connection, that if a minor should ask that he be transferred to the adult criminal side of the court (Welf. & Inst. Code, Sec. 606), a juvenile court judge would no doubt honor such a request and transfer the case to the adult criminal court, where the accused juvenile could exercise in detail all of the rights guaranteed by the federal Constitution to one accused of crime, among them being a right to bail, a right to a trial by jury, a right to have his guilt proven to a moral certainty and beyond a reasonable doubt, and a right to exclude all confessions made by him to peace officers in the absence of the preliminary warnings prescribed by the *Escobedo, Dorado* and *Miranda* cases. So far as we are informed, no such request has ever been made by a minor said to have violated a criminal statute; the reason is obvious—the treatment accorded a young person under juvenile court theory and practice is easier on him and more to be welcomed than procedure under the criminal law.

"Our legal system oriented toward civil rights, holds generally that, because of their youth, minors are not fully accountable in contract or in tort; and it seems, therefore, not a little ridicu-

lous to hold that under the *Dorado* rule the state would have to prove initially that the minor involved must have understood constitutional warnings of the peace officers relative to confessions before such confessions would be admissible in evidence. An 8, 9, or 10-year-old boy, or even a minor of an age up to majority, is considered by our civil law as incapable of clearly making a binding contract in the same way as an adult; in tort law there are many situations in which a juvenile is not held to the same standard of care as one who has gained his majority; the necessity of guardianship, in connection with the property rights of minors, illustrates that juveniles are not invariably held to adult standards of understanding and judgment. An unaided minor cannot convey his real property, even though he knowingly wishes to do so. How then can he be expected knowingly and effectively to waive his constitutional rights? If the procedure based on the *Escobedo, Dorado* and *Miranda* cases should be held to apply in all strictness to juveniles and juvenile proceedings in order to exclude confessions made to peace officers, the doctrine of *parens patriae* would become a hollow phrase and the juvenile court simply a young people's criminal court in every situation such as the present."

The *Castro* decision was made prior to the holding of this Court in *The Matter of the Application of Gault*, 387 U.S. 1, 87 Supreme Court, 1420, 18 L. Ed. 2d 527. The Legislature of the State of California then amended the aforesaid section 630 of the Welfare and Institutions Code effective November 8, 1967

to provide for the rights set out in the *Gault* decision in Juvenile Court matters.

The within cause appears to be a similar case to that considered in *Gault*, inasmuch as the provisions of the California Welfare and Institutions Code, Division 2, Chapter 2, Section 731 which reads as follows:

> "*Section 731. Person violating laws; ward of court; commitment to youth authority.* When a minor is adjudged a ward of the court on the ground that he is a person described by Section 602, the Court may order any of the types of treatment referred to in Sections 727 and 730, and as an additional alternative, may commit the minor to the Youth Authority."

and Division 2.5, Chapter 1, Section 1769 which reads as follows:

> "*Section 1769. Discharge of persons committed by juvenile court.* Every person committed to the authority by a juvenile court shall be discharged upon the expiration of a two-year period of control or when the person reaches his 21st birthday, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800)."

provide that your Petitioner could be committed to a State Institution, the California Youth Authority, for a period of two years. For this reason, Petitioner believes that under the reasoning of the *Gault* case and the California *Castro* case that her constitutional rights to due process of law includes the right to bail

under the XIV and VIII Amendments of the Constitution, which right to bail has been denied her.

CONCLUSION

In conclusion, for the reasons above stated, we contend that Petitioner's constitutional right to bail under the Constitution of the United States, was denied her and that she is being detained without due process of law under the provisions of the Constitution of the United States by virtue of the finding of the Trial Courts below and that these Judgments should be reversed.

Dated, Bakersfield, California,
April 8, 1968.

Respectfully submitted,
THOMAS R. DAVIS,
Attorney for Petitioner.

RICHARD HOSKING,
Of Counsel.

(Appendices A and B Follow)

Appendix A

In the Superior Court of the State of California
In and for the County of Kern
Juvenile Court

No. 31,730 Dept. No. 5

In the Matter of
Melinda Lou Markel

PETITION

To The Above Entitled Honorable Court:

Your Petitioner, Leon H. Epstein, respectfully represents that the above named person is within said County and is a person under the age of twenty-one years, to-wit: of the age of 16 years, born (May 6, 1951); that said person comes within the provisions of Section 602 of the Welfare and Institutions Code of the State of California, in this; that said minor violates any law of this State or of the United States, or any ordinance of any city or county of this State defining crime, To-Wit: Selling Dangerous Drug.

On or about February 19, 1968 said minor was involved with another individual in selling a restricted dangerous drug, to-wit: Lysergic Acid Diethylamide, without the written prescription of a physician, den-

tist, podiatrist, or veterinarian licensed to practice in this State, thereby violating Section 11912 of the Health and Safety Code of California.

Minor was taken into custody March 13, 1968 at 7:00 A.M.

That the names and addresses of the parents or guardian having control of such minor within the County are as follows:

Father: Clarence Albert Markel, Ventura, California
Mother: Lucille Emma Markel, 4017 Eton Street, Bakersfield, California

Wherefore, your petitioner prays that this Honorable Court set a time for the hearing of this petition; and that this Honorable Court, at such time, inquire into the truth of the matters herein alleged; that in pursuance of the Statute in such case made and provided, make such order in the premises as this Honorable Court may seem meet and proper.

Leon H. Epstein
Petitioner
Kern County Probation Department

County of Kern
State of California—ss.

Leon H. Epstein being duly sworn, deposes and says:

That he is the Petitioner in the foregoing matter; that he has read the foregoing Petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information or belief, and that as to those matters he believes to be true.

Leon H. Epstein
Petitioner

Subscribed and sworn to before me this 14th day of March, 1968.

Vera K. Gibson, County Clerk,
in and for the County of Kern,
State of California
By Lois M. Osborne
Deputy Clerk

Filing of the above petition is hereby approved as provided by law this 14th day of March, 1968.

Clifton Morris
County Probation Officer
By _____
Deputy Probation Officer

(Seal)

Filed March 14, 1968,
Vera K. Gibson, County Clerk.

The Superior Court of the State of California
County of Kern
Juvenile Department

Petition S-31,730

In the Matter of:
Melinda Lou Markel,

DETENTION HEARING
Kern County Juvenile Hall
Friday, March 15, 1968

D.P.O. Epstein swears in those present, all answered "I do". Introduces the minor, and her mother, and the attorney retained by them, Mr. Richard Hosking.

Hosking: May we have a reporter? Referee: We have one.

Referee: Melinda, the hearing today is known as a detention hearing. A supplemental petition has been filed in your behalf, alleging certain facts. This petition will be read to you and if either you or your mother have any questions as to its meaning, we will explain it to you. We will not today decide if this petition is true. This will have to be decided at a later hearing to be held in the future. We will set the date for that future hearing and we will also decide today whether you are to remain in custody pend-

ing that hearing, or whether some other plan or placement can be worked out.

Do you have any questions? Mother: I understand.

Melinda, any questions? Melinda: No, sir.

Mr. Hoskings, do you intend to appeal the decision of the Referee at this hearing?

Hosking: I can't say. I don't know what that decision is going to be.

Referee: I don't either at this moment. The reason I am asking is that we have the Juvenile Court Judge sitting next door in the other court. If you plan to appeal, we can just move this case next door and let the Judge hear it initially.

Hosking: I don't know. If the decision is adverse I am intending to ask for a writ of habeas corpus this afternoon, so it is not an appeal.

Referee: Well, I think we will just set this for the court next door and let the Judge hear the matter.

Hosking: I am perfectly satisfied to have it heard here.

Referee: Well, it would eventually have to go before the judge anyway so let's do it this way. If you are planning this, I would be only too happy to let the judge make the decision. (to DPO—Have they started the

case next door?) I believe so. Mr. Brown indicated that he would slip the detentions in.

Epstein: Do you want it moved? Referee: Yes I do. (Gives papers back to the P. O.) Mr. McGinnis: If she is detained, you will have to change the detainer for the judges signature.

(All leave the room) (All return—Mr. Epstein stating the judge sends the case back and asks that it be heard by the Referee.)

Referee: Mr. Hosking, I take it since you are retained by the Markels, there is no point in going into the rights of the minor.

Hosking: We will waive the reading of the constitutional rights. I have already informed them. And we will also waive the reading of the petition.

Referee: If your clients understand the petition. It is for their information also.

Hosking: The petition was only delivered a few minutes ago. The record might indicate that Mrs. Markel hasn't read it.

Mrs. Markel: I haven't seen anything.

Hosking hands copy of petition to Mrs. Markel who reads it and returns it.

Hosking: Let the record show that the petition has been read by Mrs. Markel, by Melinda Markel, and I have read it. I would waive any further reading of the petition.

Referee: All right. Mr. Epstein, what is the recommendation of the Probation Department.

Epstein: Melinda is a ward of the Court, having been so adjudged on March 1, 1968 on an amended petition alleging Melinda was present in a room where marijuana was being smoked.

Police reports indicate that Melinda was involved with another individual in selling an under-cover agent from the Police Dept. a substance known as lysergic acid diethylamide.

At this time we are recommending that Melinda remain in custody for her own protection as well as the protection of other persons in that it appears she has violated a previous order of the court.

Referee: Are there any questions or comments regarding the recommendation?

Hoskins: I would point out to the court that the allegation of the petition, the alleged offense occurred on February 9, 1968, and the prior order of the court was made March 1, 1968.

DPO Epstein: That is correct, that is true.

Hoskins: It is my understanding there was a Supplemental petition at the hearing on March 1; and that this apparently was some alleged offense that occurred independently of that involved with the last hearing,

something that the police were working on which was not brought out.

Epstein: That is true. Strictly speaking at the time of the alleged occurrence of the present offense, she was not a Ward of the Court but was pending investigation prior to the court hearing.

Hosking: In other words, this alleged offense occurred prior to the making of the Ward.

Epstein: That is correct.

Referee: Melinda, do you have any comments that you wish to make or that your attorney wishes you to make regarding the recommendation?

Hosking: I think it goes without saying that she wants to get out, and surely Mrs. Markel wants her out, that is, of course, pending the hearing.

Referee: The court is going to set the Hearing Date for on or before April 5, 1968; and the court is going to order that the minor be detained pending that hearing, under Section 636 of the Welfare & Institutions Code, as it would appear necessary for her own protection and the protection of others.

Hosking: What was that date?

Referee: April 5, 1968. Now, this is a tentative hearing date. It could be earlier and if so you would be notified of the exact date and time.

Now let's see, you are requesting a copy of the petition. You have that at the present time.

Hosking: Yes, I have a copy of the petition.

Referee: You also wish a copy of the detention order and the transcript. Is that correct?

Hosking: Yes, your honor.

Referee: Okay, we will get it to you.

Hosking: I assume that the demurrer is over-ruled?

Referee: That is correct.

Transcript of Gregg shorthand notes from the note book of Winifred Joplin, detention hearing reporter, Friday, March 15, 1968, Kern County Juvenile Hall.

Vera K. Gibson,
County Clerk and Ex-Officio
Clerk of the Superior Court.
Winifred L. Joplin.

(Seal)

Filed March 19, 1968,
Vera K. Gibson, County Clerk.

File: 35753
Set For: 3-22-68
Court: Judge
D.P.O.: BMJ

The Superior Court of the State of California
in and for the County of Kern
Juvenile Department

Action S-31,730

In the Matter of:
Melinda Lou Markel
Minor.

REPORT OF PROBATION OFFICER

Age 16. Date of birth: 5-6-51. Place of birth: Ventura, California.

Present address: 4017 Eton Street, Bakersfield, California.

Father: Clarence Albert Markel.

Address: Ventura, California.

Mother: Lucille Emma Markel. Maiden name: Badger.

Address: Same as minor.

Step-(Father) (Mother)

Address:

Your Probation Officer, undersigned, respectfully submits the following report, in which matter a petition was filed on the 14th day of March, 1968, under Section 602 of the Welfare and Institutions Code:

Cause of Present Hearing:

This girl is before the Court at this time by reason of a Supplemental Petition signed by Leon H. Epstein under Section 602 of the Juvenile Court Law alleging that said minor violates any law of this State or of the United States, or any ordinance of any city or county of this State defining crime, to-wit: Selling Dangerous Drug.

On or about February 19, 1968, said minor was involved with another individual in selling a restricted dangerous drug, to-wit: Lysergic Acid Diethylamide, without the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this State, thereby violating Section 11912 of the Health and Safety Code of California.

Minor was taken into custody March 13, 1968, at 7:00 a.m.

Circumstances:

The Bakersfield Police Department submitted information alleging that on or about February 19, 1968, Melinda Markel and her companion, Daniel Terrance Finnegan, were involved in the sale of Lysergic Acid Diethylamide. According to the Police Department, their officer, Ed Smith, had received information that he could make a purchase of Lysergic Acid Diethylamide from Daniel Terrance Finnegan. Officer Ed Smith reports that at approximately 6:20 p.m. on February 19, 1968, he went to the residence of Daniel Terrance Finnegan at 910 Oleander Avenue in Bakersfield and, at that time, while talking to Finne-

gan about the purchase, Officer Smith observed a young female sitting on the steps. Officer Smith relates that the young girl, whom he later learned called herself "Lindy," was seated on a stairway within hearing distance of his conversation with Finnegan, however, Officer Smith cannot be sure that she was listening. Officer Smith states that Finnegan indicated willingness to sell Lysergic Acid Diethylamide and Officer Smith reports that he advised Finnegan that he would leave and return later with the money for the purchase.

Officer Ed Smith reports that he then contacted his fellow officers, John Gordon and K. Cravens of the Bakersfield Police Department, at the intersection of 4th and Chester Avenue in Bakersfield and that he was instructed by them to return to Finnegan's home to make the purchase; and Officer Smith left his fellow officers equipped with a Fargo transmitting unit.

Officer Smith reports that he returned to Finnegan's home at 910 Oleander Avenue at approximately 6:45 p.m. and that on this second occasion, the young girl was again present. Officer Smith reports that discussion ensued with Finnegan regarding the sale of Lysergic Acid Diethylamide and that the young girl, who later identified herself as "Lindy," was present, fully aware of, and particating in the conversation. Officer Smith continues by alleging that Finnegan took four capsules from a cigarette-lighter handing these to the officer and that Officer Smith gave Finnegan $22 for the four capsules and that the minor, known as "Lindy," was present and aware of the nature of the transaction.

Officer Smith reports that he then placed the four capsules in his pocket and inquired about obtaining more in the way of drugs and/or narcotics and that Finnegan responded that they were going north to San Francisco the next day with the intention of obtaining such. However, Finnegan allegedly advised Officer Smith that he would make an effort to procure narcotics if Officer Smith would give him a ride.

At this point, Officer Smith relates that it was approximately 6:55 p.m. when he left Finnegan's home and that he went outside with the young girl who introduced herself to him as "Lindy." When Officer Smith asked "Lindy" where they would be going, she allegedly replied "by Stockdale Highway" and shortly thereafter, Daniel Terrance Finnegan, "Lindy," and Officer Ed Smith left the Finnegan residence in Officer Smith's car and proceeded to an address where Finnegan got out of the car leaving Officer Smith and "Lindy" in the vehicle, and Officer Smith alleged that "Lindy" commented "I just wish we could get some more acid and some grass." Officer Smith continues by stating that Finnegan soon returned to the car and that he and the officer and "Lindy" drove to another address at which point Finnegan allegedly spoke to "Lindy" "Give me the paraphernalia while I think of it" and at that "Lindy" responded by opening her purse and removing a syringe, an eyedropper, and a hook type holding device fashioned from what appeared to be a bobby pin. At this point, Finnegan allegedly commented "I had to put it in the top of your purse before I went into my house. My folks always look through my

pockets—they think I bring a lid home with me. What a hassle." Finnegan left the vehicle, with Officer Smith and "Lindy" remaining in the car, and spoke with two men, whose identities were unknown to Officer Smith who could not hear the conversation. The officer reports that Finnegan then returned to the vehicle and that he, Finnegan, and "Lindy" went to a few other places where apparently Finnegan was unsuccessful, and that finally, Officer Ed Smith dropped Finnegan and "Lindy" off at the Jumbo Burger located at 24th and Golden State Highway in Bakersfield.

Officer Smith reports that he then rendezvoused with his fellow officers, John Gordon and K. Cravens, at the 2500 block of N Street where Officer Smith gave the evidence to K. Cravens at approximately 7:40 p.m.

Officer K. Cravens reports that he received four blue capsules from Officer Ed Smith and that he delivered these capsules to Chemist, Herb Irwin of the Kern County Sheriff's Office, as evidence for analysis.

Officer Irwin reports that he received four capsules from Officer K. Cravens and that laboratory analysis confirmed these capsules to contain Lysergic Acid Diethylamide.

Officer John Gordon of the Bakersfield Police Department reports that he was present at the time Officer Ed Smith gave the four capsules to Officer K. Cravens as evidence and that he was with Officer Cravens at the time he gave the four capsules to Chem-

ist Irwin of the Kern County Sheriff's Office, as evidence for analysis.

Daniel Terrance Finnegan was indicted by the Grand Jury and his whereabouts was unknown until March 20, 1968, at which time he was arrested.

Melinda Markel was taken into custody on March 13, 1968, and lodged in Juvenile Hall where she has remained pending Court hearing.

Recommendation:

Jurisdictional:

Should physical evidence and testimony confirm the allegations of the petition as true, the Probation Officer recommends:

1. The allegations of the Supplemental Petition to be true.

2. The minor to be a fit and proper subject for consideration under Section 602 of the Juvenile Court Law.

Said minor be detained at Juvenile Hall and that the matter be continued to April 3, 1968, for the disposition phase.

Respectfully submitted,
Clifton Morris,
County Probation Officer.
By /s/ Betty Jensen,
(Mrs.) Betty M. Jensen,
Supervising Probation Officer.

(Seal)
Dated, March 21, 1968
BMJ:dg

Appendix B

The Superior Court of the State of California
for the County of Kern

No. 842

Melinda Lou Markel, Petitioner,

vs.

Dutler Dauwalder, Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Walter Osborn, Jr., Judge of the Superior Court, for the County of Kern:

The Petition of Melinda Lou Markel respectfully shows:

1. Melinda Lou Markel, in whose behalf the Writ is applied for, is confined or restrained of her liberty at the Juvenile Hall, 1831 Ridge Road, Bakersfield, California, by Dutler Dauwalder, the Respondent, Superintendent, Juvenile Department, Juvenile Hall, County of Kern, State of California, 1831 Ridge Road, Bakersfield, California.

2. The name and location of the Court under whose process Petitioner is confined is the Juvenile Court of the Superior Court of the State of California for the County of Kern, with offices in the Courthouse, Truxtun and Chester Aves., Bakersfield, California.

3. The nature of the Court proceeding and the case number resulting in the confinement is Supplemental Petition filed in the matter of Melinda Lou Markel, No. 31, 730 in Dept. No. 5 of the said Juvenile Court, wherein the Kern County Probation Department as Petitioner through one Leon H. Epstein represented that the Petitioner is a person under the age of 21 years, to-wit, of the age of 16 years, born May 6, 1951, that said person comes within the provisions of Section 602 of the Welfare and Institutions Code of the State of California, in the said Minor violates any law of this State or of the United States, or any ordinance of any City or County of this State defining crime, to-wit: selling dangerous drug. And further, that on or about February 19, 1968, said minor was involved with another individual in selling a restricted dangerous drug, to-wit: Lysergic Acid Diethylamide, without the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, thereby violating Section 11912 of the Health and Safety Code of California. That Petitioner was taken into custody March 13, 1968, at 7:00 o'clock a.m. A hearing was had on March 15, 1968, under Section 636 of the Welfare and Institutions Code of the State of California wherein and whereby an Order detaining the petitioning Minor in Juvenile Hall was made, said Order for Detention to be for the period up to and including April 5, 1968.

4. That no plea was entered to the above proceeding, but a Demurrer to the Petition was filed at said hearing and the same was overruled.

5. A hearing was had by a Referee of the Juvenile Court.

6. No appeal was taken.

7. The concise grounds on which the allegation of Petitioner is made that the imprisonment or detention is illegal is and are as follows:

a) That Section 636 of the Welfare and Institutions Code is unconstitutional in that it violates Amendment VIII of the United States Constitution, and therefore Petitioner is illegally held without bail.

b) That the provisions of said section as now constituted, even if constitutional, were not complied with at the time of hearing, and there is, was and are not substantial grounds on which to make said Order of Detention.

8. That no other applications, petitions, or motions have been made or filed in regard to this detention or restraint, nor have any other application or petitions been made to any other Court.

9. In the proceeding resulting in the confinement complained of, Petitioner was at all times represented by an attorney, namely, the signer of this Petition. The Attorney is Richard Hosking, 1930 18th St., Bakersfield, California, phone number 327-0274. Petitioner is still represented by an attorney.

I, the undersigned, say:

I am the attorney for the Petitioner in this action; the above document is true of my own knowledge, except as to matters that are stated in it on my owa information and belief, and as to these matters I

believe them to be true. Executed at Bakersfield, California, on March 15, 1968, I declare under penalty of perjury that the foregoing statements are true and correct, that I am an attorney at law duly admitted to practice in the State of California, that Petitioner is presently unavailable to my office to make the signature on the within Petition for the reason that she is in custody and therefore I execute the Petition for her.

By /s/ Richard Hosking
Richard Hosking.

POINTS AND AUTHORITIES

Rule 56.5, California Rules of Court.

Appellate Rules—S.C.-D.C.A.; Rule 201(f), Rules of Superior Court.

In re Macidon, 240 C.A.2d, page 600 provides that a Writ of Habeas Corpus is a proper method of reviewing an order made at a detention hearing.

Amendment VIII of the Constitution of the United States, and *In re Castro, 243 CalAp2d, page 402 at page 408.*

"Another right given to persons accused of crime is the right to bail (U.S. Const., Amend. VIII), but bail, as such, is not now provided for in the Juvenile Court enactment in this state."

It is the position of Petitioner that the whole of Section 636 of the Welfare and Institutions Code is unconstitutional as being in conflict with Amendment VIII of the United States Constitution, and further,

that there were not sufficient facts adduced to establish that the Order made was proper under the holding of the cause of In re Macidon.

Received copy of the foregoing this 15th day of March, 1968. Kit Nelson/gn., attorney for D.A.

Filed March 15, 1968,
Vera K. Gibson, County Clerk.

In the Superior Court of the State of California
In and for the County of Kern

No. 842

In the Matter of the Application of
Melinda Lou Markel
for a Writ of Habeas Corpus

ORDER GRANTING WRIT
Penal Code, Secs. 1473-1505
ENTERED 2

Upon reading and filing the Petition of Melinda Lou Markel whereby it appears that she is unlawfully imprisoned and restrained of her liberty by County of Kern, at the Juvenile Hall, 1831 Ridge Road, Bakersfield, Calif., Dutler Dauwalder, Superintendent of the Juvenile Hall of the County of Kern, in the State of California, from which it appears that a Writ of Habeas Corpus ought to issue, it is ordered that a Writ of Habeas Corpus issue out of and under the seal of the Superior Court of the State of Cali-

fornia, County of Kern, directed to the said Dutler Dauwalder, Superintendent of the Juvenile Hall, commanding to have the body of the said Melinda Lou Markel before me, in the court room of the said Court, at the Courthouse, Dept. 1, County of Kern, on the 18th day of March, 1968, at 9:30 o'clock a.m. of that day, then and there to inquire into the facts and the law of said alleged imprisonment and restraint, and that you have then and there the said Writ.

Dated, March 15, 1968.

Walter Osborn, Jr.,
Judge of the Superior Court.

Filed March 15, 1968,
Vera K. Gibson, County Clerk.

In the Superior Court of the State of California
In and for the County of Kern

No. 842

In the Matter of the Application of
Melinda Lou Markel
for a Writ of Habeas Corpus

WRIT OF HABEAS CORPUS

ENTERED 3

The People of the State of California: To Dutler Dauwalder. Greeting: We command you, that you have the body of Melinda Lou Markel by you impris-

oned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said shall be named or charged, before Walter Osborn, Jr., Judge of the Superior Court of the County of Kern, State of California, at the courtroom of said Court, in the County of Kern, on the 18th day of March, 1968, at 9:30 o'clock in the forenoon of that day, to do and receive what shall then and there be considered concerning the said Melinda Lou Markel. And have you then and there this writ.

Witness Hon. Walter Osborn, Jr., Judge of the Superior Court of the County of Kern, State of California, at the Courtroom thereof, in said County, this 15th day of March, 1968. Attest my hand and Seal of said Superior Court, the day and year last above written.

(Seal) Vera K. Gibson,
County Clerk and ex-Officio
Clerk of Superior Court.
By L. B. Whit, Deputy.

Filed March 18, 1968,
Vera K. Gibson, County Clerk.

Maurice E. Tice
Process Service
201 Ninth Street
Bakersfield, California

RETURN OF SERVICE

M. E. Tice says:

I am and was at the time of the service of the within document, a citizen of the United States of America, over the age of eighteen years, and not a party to the within entitled action; I personally served the within Writ of Habeas Corpus on Dutler Dauwalder, by serving Glen Brown, Supervisor of Dutler Dauwalder (Juvenile Hall, Ridge Road, Bakersfield) by delivering to and leaving with said Glen Brown personally in the County of Kern, State of California, on the 15th day of March, 1968, a copy of said Writ of Habeas Corpus with attached Petition for Writ of Habeas Corpus.

I certify under penalty of perjury that the foregoing is true and correct. Dated at Bakersfield, Calif., March 15, 1968.

Fees: $3.00
2.80 mileage

$5.80 total

M. E. Tice, Process Server
By M. E. Tice
M. E. Tice (Server)

Superior Court of the State of California
In and For the County of Kern

Action No. 842

Date, March 18, 1968. Court met at 9:30 a.m., Department No. 1. Present, Hon. Walter Osborn, Jr., Judge. P. L. McClain, Deputy Clerk. Margaret Beckham, Reporter. J. T. Lanier, Bailiff.

In the Matter of the Application of
Melinda Lou Markel
for a Writ of Habeas Corpus

Counsel:

Richard Hosking
Warren Shafer, Deputy District Attorney
Dutler Dauwalder
Clifton Morris, Probation Officer
T. Glen Brown, Chief, Juvenile Division
Betty Jensen, Deputy Probation Officer

MINUTES

Nature of Proceedings: Melinda Lou Markel, minor, present. Motion of People for continuance duly argued and granted. Continued to March 19, 1968, at 9:30 a.m. All records in the Matter to be produced at said hearing. No bail set, minor remanded to custody of Juvenile Division, Probation Department.

Book 1-35. Page 66.

(Attest) Vera K. Gibson,
County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Kern.
By E. Hayboll, Deputy.

Superior Court of the State of California
In and For the County of Kern

Action No. 842

Date, Tuesday, March 19, 1936. Court met at 9:30 a.m., Department 5. Present, Hon. John D. Jelletich, Judge, L. M. Smiddy, Deputy Clerk. Adelene Remerowski, Reporter. William Koepp, Bailiff.

In the Matter of the Application of Melinda Lou Markel

Counsel:

Richard Hosking
Warren Shafer, Deputy District Attorney
Dutler Dauwalder
Clifton Morris, Probation Officer
T. Glen Brown, Chief, Juvenile Division
Betty Jensen, Deputy Probation Officer

MINUTES

Nature of Proceedings: Petition for Writ of Habeas Corpus. Richard Hosking, Counsel, appearing on behalf of the Petitioner, makes an opening statement to the Court.

Disposition: It is by the Court ordered that the Writ of Habeas Corpus be Denied. Upon the Court's own Motion, Melinda Lou Markel, Juvenile File No.

31730, will be set for hearing on Friday, March 22, 1968 at 2:00 p.m., in Juvenile Court.
Book 5-4

(Attest) Vera K. Gibson,
County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Kern.
By L. M. Smiddy, Deputy.